

REMARKS

Claims 20-37 were pending prior to this amendment. Claims 23, 24, 29 and 31-34 were withdrawn from consideration as directed to non-elected subject matter, and by this amendment are cancelled without prejudice to their reassertion in a divisional application to be filed. Following entry of this amendment claims 20-22, 25, 27-28 and 30 will remain pending. Claims 26 and 30 are cancelled without prejudice since same are rendered redundant in view of amendments made to claim 20. Claims 27-28 and 30 are amended to direct their dependency to claim 20 in as they previously were dependent of claim 26 which is now cancelled.

Of the now pending claims 20-22, 25, 27-28 and 30, all were rejected under 35 USC 112, 1st ¶ as lacking a recitation that "total sodium concentration must not be more than that of 6.9% NaCl solution or equivalent." Claim 20 as now amended includes such a recitation, hence the 35 USC 112, 1st ¶ rejection is now moot and should be withdrawn.

In the Office Action preceding this current Office Action, predecessor claims 1-7 to now pending claims 20-22, 25, 27-28 and 30 were rejected under 35 USC §§ 102 and 103 over WO 98/08500. Preceding claims 20-22, 25, 27-28 and 30 filed thereafter recited "An L-arginine free" composition and for this reason were rejected under 35 USC § 112, 1st ¶ as containing new matter, namely, an "explicit exclusion in claim language" of L-arginine. Claim 20 has now been amended to delete the "explicit exclusion in claim language" and to instead change the claim transition from "comprising" to read as "consisting essentially of." This moots the rejection of these claims under 35 USC 112, 1st ¶.

As respects the possible reapplication of WO 98/08500 to claims 20-22, 25, 27-28 and 30, WO 98/08500 is not applicable as a basis for a 35 USC §§ 102 or 103 rejection in that the "consisting essentially of" transition of independent claim 20 (and accordingly dependent claims 21-22, 27-28 and 30) excludes L-arginine from the claimed composition.

As respects claims 21 (NaCl 4.0-4.2% -support for this amendment found in original claim 2), claim 25 (NaCl 1.5%), claims 25-28 (NaCl 1.5%) and claim 30 (NaCl 4.2% -support for this amendment found in Example 1), the NaCl content of these claims are far below the minimum NaCl content of 6% that WO 98/08500 requires.

As respects Chemical Abstract 121:49804, cited for rejection of claim 20 under 35 USC 102(b), this because of the term "about" preceding the quantification of the NaCl amount of "between... 1.5% and 6.5% (w/v)," the term "about" has been deleted by this amendment. There is now no overlap by reason of the term "about" between the Chemical Abstract and the pharmaceutical composition now claimed. The 35 USC 102(b) rejection over the Chemical Abstract should be withdrawn.

CONCLUSION

It is respectfully submitted that all issues and rejections have been adequately addressed and that all claims are allowable and that the case should be advanced to issuance.

If the Examiner has any questions or wishes to discuss the claims, the Examiner is encouraged to call the undersigned at the telephone number indicated below.

Respectfully submitted,



Charles M. Cox, Reg. No. 29,057

Date: Aug. 19, 2003

AKIN GUMP STRAUSS HAUER & FELD LLP
711 Louisiana, Suite 1900
Houston, Texas 77002
Telephone: (713) 220-5800
Facsimile: (713) 236-0822